93-565

NO. _____

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

SHARON WILLIAMS,
Petitioner

VS.

THE UNITED STATES OF AMERICA
Respondent

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I. Whether the Fifth Circuit Court of Appeals failure to distinguish a "buyer-seller" drug relationship from that of a conspiratorial relationship is in conflict with other Federal Circuit Courts of Appeals, and therefore denied the Petitioner due process of law.

LIST OF PARTIES IN APPELLATE COURT

Sharon Williams,

Appellant,

United States of America,

Appellee

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
LIST OF PARTIES IN APPELLATE COURT.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv
TABLE OF CONTENTS OF APPENDIX TO THE PETITION.....	vi
REFERENCE TO OPINIONS OF LOWER COURTS.....	1
JURISDICTION.....	1
CONSTITUTIONAL PROVISION AT ISSUE.....	2
STATEMENT OF THE CASE.....	3
ARGUMENT.....	12
THE EXISTENCE OF SELLER-BUYER RELATIONSHIP DOES NOT ESTABLISH KNOWING AND INTENTIONAL PARTICIPATION IN A DRUG CONSPIRACY.....	12
CONCLUSION.....	19
CERTIFICATE OF SERVICE.....	21

TABLE OF AUTHORITIES

Cases	Page
In re Winship, 397 U.S. 358 (1970)	18
United States v. Baker, 905 F.2d 1100 (7th Cir.), cert. denied, 111 S.Ct. 206 (1990)	15
United States v. Ford, 324 F.2d 950 (7th Cir. 1963)	15
United States v. Grunsfeld, 558 F.2d 1231 (6th Cir. 1977), cert. denied, 434 U.S. 872 (1977)	13
United States v. Kapp, 781 F.2d 1008 (3rd Cir.), cert. denied, 475 U.S. 1024 (1986)	13,14
United States v. Kimmons, 917 F.2d 1011 (7th Cir. 1990)	15
United States v. McIntyre, 836 F.2d 467 (10th Cir. 1987)	13,16, 17

United States v. Onick,
889 F.2d 1425
(5th Cir. 1989)..... 12

United Sta[illegible] v. Torres,
503 F.2d 1120
(2nd Cir. 1975)..... 13

United States v. Townsend,
924 F.2d 1385
(7th Cir. 1991)..... 12,14,
15

Title 18 U.S.C. § 3742..... 1

Title 28 U.S.C. § 1254(1)..... 1

Title 28 U.S.C. § 1291..... 1

U.S. Supreme Court Rule 10..... 1

U.S. Supreme Court Rule
10.1(a)..... 14

TABLE OF CONTENTS OF THE APPENDIX TO THE PETITION

	Page
Cover.....	A-1
Table of Contents.....	A-2
Opinion of The Fifth Circuit Court of Appeals.....	A-3

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REFERENCE TO OPINIONS OF LOWER COURT

The opinion of the Fifth Circuit Court of Appeals is reproduced in the appendix.

JURISDICTION

The Court of Appeals had appellate jurisdiction over the district court's final judgment in this criminal case, pursuant to 18 U.S.C. § 3742 and 28 U.S.C. § 1291. The panel's order was entered on July 13, 1993. See A-3. Consistent with this Honorable Court's Rule 13, this Petition is timely filed. This Court's jurisdiction in the instant case is based on 28 U.S.C. § 1254(1), and United States Supreme Court Rule 10.

CONSTITUTIONAL PROVISIONS AT ISSUE

1. The Due Process Clause of the Fifth Amendment to the United States Constitution states:

> "[N]or shall any person be deprived of . . . liberty . . . without due process of law."

STATEMENT OF THE CASE

The jurisdiction of the district court was invoked pursuant to the indictment filed in the United States District Court for the Northern District of Texas, Amarillo Division. References herein shall be made to the trial record, by the designation "R".

On June 4, 1991, the Petitioner was indicted by a federal grand jury, charging her with one count of conspiracy to distribute and possess with intent to distribute cocaine and cocaine base; and with two counts of distribution and possession with intent to distribute cocaine.

In 1987, Samuel Cleon Scott, Jr. returned to Amarillo, Texas, from California and began to deal cocaine. (2 R.908). The first cocaine that he sold he brought with him from California, and sold

it in two to three weeks. (2 R.923). Scott continued to acquire cocaine for further distribution, both locally and from people in California who were passing through town. (2 R.924). In the summer of 1989, Scott started to buy cocaine from Gloria Reed. (2 R.971). Gloria Reed would front the cocaine to Scott, which he believed was ultimately coming from Doris Davis. (2 R.973).

Eventually Scott and Reed began to buy cocaine together in larger quantities. (2 R.974). On one occasion they travelled to California to purchase a kilo of cocaine. Id. They went to California first, and Scott later flew to Los Angeles to meet her. (2 R.977). After encountering some difficulty in locating some cocaine, Scott flew back to Amarillo. (2 R.978). A couple of days later he received a phone call from Reed who said

she was back in Amarillo with the drugs. (2 R.279). Scott went to meet Reed at T.J. Sneed's house where he saw a kilo and a half of powder cocaine. (2 R.980). After converting the powder into crack cocaine, Scott sold two-thirds of it and Reed sold the rest. (2 R.1003-1004).

On November 14, 1989, Scott and Reed made a trip to Houston for the purpose of purchasing a kilo of cocaine. Id. According to Scott, Reed had a connection in Houston. (2 R.1005). On the way to Houston, they stopped in Huntsville, Texas, where Scott overheard a phone call made by Reed who was calling a lady named Sharon. (2 R.1006). Reed told Scott that Sharon was in Houston. (2 R.1007).

After arriving in Houston, Reed and Scott checked into a motel where they stayed in the same room. Id. The next morning they called Sharon, who came to

their room. (2 R.1008). Upon Sharon's arrival at the room, they counted the money to make sure all the money was there. Id. Scott identified the lady he knew as Sharon to be the defendant Sharon Williams. (2 R.1009).

Scott and Reed had brought with them $24,500.00 in cash in anticipation of purchasing a kilo of cocaine. Half the money was Scott's and the other half was Gloria Reed's. Id. After shopping in the mall, Scott followed Reed and Sharon to a house. (2 R.1012). Prior to going to the house, Reed had told Scott they were going to pick up the dope. (2 R.1013). After arriving at the house, Gloria Reed and Sharon went into the house, while Scott waited outside in the car. (2 R.1012-1013). They stayed in the house two to three minutes, came out and got in Sharon's car, and he followed them to a

seafood restaurant. (2 R.1014). While at the restaurant, Reed showed Scott the cocaine which she was carrying in her purse. Id.

On November 22, 1989, Scott and Reed made another trip to Houston to get more cocaine. (2 R.1016). They planned the trip the previous day, with Gloria Reed making a phone call to set up the deal. (2 R.1017). Scott heard Reed calling Houston and talking to Sharon. Id. They drove straight through to Houston, checked into a La Quinta Inn motel, and called Sharon. (2 R.1018). Sharon came over and they counted the money, which was a $1,000.00 short. (2 R.1019). Scott and Reed were going to purchase a kilo for themselves, and another kilo for someone called "Little Man". Id. Scott, Reed and Sharon left the motel and proceeded to an office building in downtown Houston. (2

R.1020). They went into the office and put the money on a desk and counted it. Id. Reed told Scott that it would be okay for her to owe Sharon the $1,000.00 they were short. (2 R.1021). Sharon and a "guy" who was at the office took the money. Id.

Scott went to his car and waited, while Sharon, Gloria Reed, and the "guy" in the office left in Sharon's car. (2 R.1022). They returned fifteen to twenty minutes later, and Gloria got into the car with Scott and showed him the dope, which appeared to be two kilos. Id.

Scott further testified that on December 23, 1989, Gloria and a lady named Anita travelled to Houston. (2 R.1028). Scott spoke with Gloria prior to the trip and determined that she intended to purchase a kilo of cocaine. (2 R.1029). However, she did not purchase a kilo

because the price had gone up from $24,500.00 to $30,000.00 a kilo. Id. After Scott spoke by phone with Reed in Houston, and they decided to buy a quarter of a kilo. (2 R.1030). Out of this quarter, Scott received five ounces which Reed had cooked into crack. (2 R.103). Scott testified that Reed indicated she had gotten the cocaine from Sharon. Id.

On January 17, 1990, Scott and Reed again travelled to Houston in order to buy a kilo. (2 R.1033). Gloria had called Sharon and it was agreed that the price would be $24,500.00. (2 R.1034). After they arrived in Houston, Reed called Sharon and found out it would take a couple of days to get the cocaine, so Scott flew back to Amarillo. (2 R.1034). Scott saw Reed two to three days later at T.J.'s house in Amarillo. (2 R.1036). At T.J.'s house they went through the same

process of breaking down the kilo of cocaine. Id.

On February 13, 1990, Gloria Reed made a trip to California. (2 R.1037). This trip to California was predicated on the conversations Reed and Sharon had two days prior to the trip. (2 R.1038). Reed had called Sharon from Scott's mother's liquor store, and he overheard the conversation. The price negotiated between Reed and Sharon was too high, so Reed went to California. Id. Following Reed's trip to California, she returned with a kilo of cocaine. (2 R.1039-1040).

In March of 1990, Gloria Reed went to Houston to purchase a quarter kilo with $7,500.00 that Scott had sent with her. (2 R.1041). Reed was gone three to four days, and when she returned she came to Scott's house on 12th Street and showed him the cocaine. Id. This trip marked

the last transaction between Sammy Scott and Gloria Reed. (2 R.1042).

ARGUMENT

I.

THE EXISTENCE OF SELLER-BUYER RELATIONSHIP DOES NOT ESTABLISH KNOWING AND INTENTIONAL PARTICIPATION IN A DRUG CONSPIRACY

It is axiomatic that to prove one was a member of a conspiracy, the government must present sufficient evidence to demonstrate that the person knew of the conspiracy and intended to join and associate himself with its criminal design and purposes. It is clear that proof of the existence of a mere buyer-seller relationship without more is inadequate to tie the buyer [or seller] to a larger conspiracy. United States v. Onick, 889 F.2d 1425 (5th Cir. 1989); United States v. Townsend, 924 F.2d 1385 (7th Cir. 1991).

The evidence clearly shows that two persons, Sammy Scott and Gloria Reed, were

members of a drug conspiracy in the Amarillo, Texas area. Furthermore, the evidence established that these two individuals had to travel outside of Amarillo, Texas to obtain cocaine. One of the locations where cocaine was obtained was from Houston, Texas. The evidence simply established that on a few separate occasions cocaine was purchased from the Petitioner, who lived in Houston, Texas.

Various circuit courts of appeals have held that merely purchasing drugs or other property from a conspiracy, standing alone, can never establish membership in a conspiracy. Id.; United States v. McIntyre, 836 F.2d 467 (10th Cir. 1987); United States v. Grunsfeld, 558 F.2d 1231 (6th Cir. 1977), cert. denied, 434 U.S. 872 (1977); United States v. Torres, 503 F.2d 1120 (2nd Cir. 1975); United States v. Kapp, 781 F.2d 1008 (3rd Cir.), cert.

denied, 475 U.S. 1024 (1986). For the reasons stated below the Fifth Circuit panel's decision is in conflict with other federal circuit courts of appeals. See U.S. Supreme Court Rule 10.1(a)

The Seventh Circuit Court of Appeals in United States v. Townsend, supra, thoroughly addressed the distinction between a buy-sell agreement and a conspiracy. In Townsend, the Court noted that a buy-sell transaction is simply not probative of an agreement to join together to accomplish a criminal objective beyond that already being accomplished by the transaction. A sale, by definition, requires two parties; their combination for that limited purpose does not increase the likelihood that the sale will take place, so conspiracy liability would be inappropriate. 924 F.2d at 1394.

The Seventh Circuit has additionally

held:

> *"[t]he relationship of buyer and seller (absent any prior or contemporaneous understanding beyond the mere sales agreement) does not prove a conspiracy . . . In such circumstances, the buyer's purpose is to buy; the seller's purpose is to sell. There is no joint objective."*

United States v. Kimmons, 917 F.2d 1011 (7th Cir. 1990), reiterating United States v. Ford, 324 F.2d 950 (7th Cir. 1963).

The mere purchase or sale of drugs (even in large quantities) does not demonstrate an agreement to join a drug distribution conspiracy "any more than a purchase of 100 tons of steel to build a skyscraper shows that the buyer has 'joined' the corporate enterprise of the manufacturer." Townsend, 924 F.2d at 1394, citing United States v. Baker, 905 F.2d 1100 (7th Cir.), cert. denied, 111 S.Ct. 206 (1990).

The evidence in the instant case reflects that Reed and Scott had several

sources of cocaine, and after negotiation would purchase cocaine from the source offering the best price. Evidence that the parties must negotiate the terms of every transaction, seek to maximize their gains at the expense of others, or engage in other forms of opportunistic behavior at the expense of the group, suggests that transaction costs among the group are high and counsel against a finding of conspiracy between its members. Townsend, 924 F.2d at 1395.

In United States v. McIntyre, supra, the Tenth Circuit Court of Appeals has similarly commented on the difference between a buyer-seller relationship and a conspiracy.- The Fifth Circuit, in the instant case, rendered an opinion in conflict with the Tenth Circuit's findings.

In McIntyre, the Court noted that a

common goal must exist between all parties involved in order to transform a buyer-seller relationship into a conspiracy. To satisfy this common goal, "the essential element of interdependence must be met - each alleged co-conspirator must depend on the successful operation of each 'link' in the chain to achieve the common goal." 836 F.2d at 471.

The McIntyre Court concluded that the government had not shown that if the buyer had failed to possess and distribute drugs on any one of the named occasions, the failure would have had any effect on the success of the other transactions. 836 F.2d at 422. This finding is critical in light of the separate transactions outlined in the instant case. Absolutely no evidence was introduced to prove that had Reed failed to obtain cocaine from Petitioner, the joint effort between Reed

and Scott would have ended.

Due process protects a defendant in a criminal case against conviction "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In re Winship, 397 U.S. 358 (1970). Due process requires that the reasonable doubt standard be indispensable for it "impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue", and it operates to give "concrete substance" to the presumption of innocence to ensure against unjust conviction. Id.

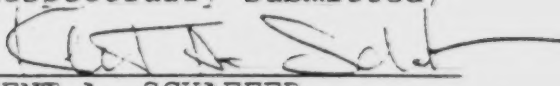
On review of the sufficiency of the evidence, the panel erroneously affirmed the conviction for conspiracy to distribute and possess with intent to distribute cocaine, where at most it was proven that Petitioner sold cocaine to a

member of a conspiracy. As has been previously shown, the Fifth Circuit has rendered a decision in conflict with those federal circuit courts of appeal cited above.

CONCLUSION

For the foregoing reason, the Petitioner respectfully submits that a compelling basis exists for this Honorable Court to grant this Petition for Writ of Certiorari, and accordingly reverse the judgment of the Fifth Circuit Court of Appeals.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that an original and forty (40) copies of the foregoing Petition for Writ of Certiorari and its Appendix were mailed by the undersigned to the United States Supreme Court on the 5th day of October, 1993. I also certify that true copies of the foregoing Petition of Writ of Certiorari were mailed to the following parties, via United States mail:

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